SAN JUAN COAL CO.

IBLA 97-3 Decided November 6, 2001

Appeal from decisions of the Farmington District Manager, Bureau of Land Management, to transfer title to certain parcels of public land within the San Juan and La Plata mines into trust for the Navajo Nation pursuant to the Navajo-Hopi Land Settlement Act, as amended. NM-54079.

Reversed.

1. Act of December 22, 1974--Indians: Generally--Lieu Selections: Generally--Statutory Construction: Generally

Section 11 of the Act of December 22, 1974, 25 U.S.C. 640d-10 (1994), as amended by sec. 4 of Public Law 96-305, the Navajo and Hopi Indian Relocation Amendments Act of 1980, and sec. 105(b) of Public Law 98-603, the San Juan Basin Wilderness Protection Act of 1984, does not authorize the Navajo Tribe or the Office of Navajo and Hopi Indian Relocation to "de-select" lands selected by the Tribe in 1986 and "re-select" other lands in 1996.

APPEARANCES: Walter E. Stern, Esq., Larry P. Ausherman, Esq., and Lynn H. Slade, Esq., Albuquerque, New Mexico, for the San Juan Coal Co.; Arthur Arguedas, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

San Juan Coal Company (San Juan) has filed an appeal in response to two July 31, 1996, letters from the Farmington District Manager, Bureau of Land Management (BLM), to the San Juan and La Plata mines informing them that BLM intended to transfer title to certain public lands that had been selected pursuant to the Navajo-Hopi Land Settlement Act of 1974, as amended, 25 U.S.C. §§ 640d - 640d-31 (1994) (the Relocation Act). San Juan operates the mines on these lands, which are included within the boundaries of federal coal leases it holds.

I. The Bureau of Land Management July 31, 1996, Letters

The Farmington District Manager's July 31, 1996, letters state:

This is regarding the Navajo-Hopi Land Settlement Act of 1974 (PL 93-531) and subsequent amendments.

Public Law 93-531 mandated the partition of the Joint Use Area (the area within the Hopi Reservation used by both Navajo and Hopi Tribes) and provided for the relocation of those families that were displaced. It also authorized the transfer of 250,000 acres of public land (in Arizona and New Mexico) to the Navajo Tribe for use by those people that were displaced.

Public Law 96-305 was passed by Congress in 1980 and amended the 1974 law. It limited the selection of land in New Mexico to 35,000 acres.

In 1984, PL 98-603 was passed by Congress, again amending the 1974 law. It allowed the Navajo Tribe to also acquire the United States mineral interests in the land selected. Transfers under this legislation are to be subject to any leases issued under the Mineral Leasing Act of 1920, and subject to any rights-of-way. The leaseholders[']rights and interests are not to be diminished in any way by the transfer.

A portion of the 35,000 acres in New Mexico has never been conveyed to the Navajo Nation.

The Office of Navajo and Hopi Indian Relocation (the entity responsible for making the selections) has recently made additional selections under the legislation. The portions of your lease * * * listed below are included in the selection. * * *

This transfer of title is authorized and mandated by legislation. It is non-discretionary on the part of the Bureau of Land Management and we will be processing it in the next few months.

These letters resulted from a June 18, 1996, Office of Navajo and Hopi Indian Relocation (ONHIR) letter to the Farmington District Manager, BLM, transmitting the Navajo Nation's May 23, 1996, request "to deselect a total of 12,465.65 acres of land previously selected but not yet conveyed and to select a total of 13,350.43 acres (a total of 21,649.57 acres have already been conveyed into trust status). The ONHIR supports the Nation's selection request." (June 18, 1996, letter at 1.)

BLM responded on July 17, 1996, that it had no objection to the deselection of the 12,465.65 acres previously selected. Concerning the new selections, BLM stated:

The acreage selected within the La Plata and San Juan Mines will cause us some future management problems by complicating the land pattern, but I am sure we can work together and minimize those problems. Any transfers should include the entire

> 40 acre parcel or lot as one way to minimize conflicts and eliminate the need for costly and time consuming surveys. On all of the mine properties selected, we will need to let the existing lessees know of the transfer, prior to the transfer.

BLM's July 31, 1996, letters to the San Juan and La Plata mines, and similar letters to other lessees and right-of-way holders, followed.

San Juan's mines are located west and north of Farmington, New Mexico, in San Juan County. 1/ BLM states that "the Navajo selections within the two mines total 2,400 acres, plus or minus five acres * * * about 759 acres in one single block at the La Plata Mine, and about 1,645 acres in two separated blocks at the San Juan Mine." (BLM Response at 2.)

San Juan states that the Navajo Nation's selections "would create a 'checkerboard' ownership pattern of selected BLM lands, unselected BLM lands, private lands, and split estate lands within the [mine] lease boundaries" at each mine. (Statement of Reasons (SOR) at 7, 8.) San Juan adds that the selections "seek the core of the minable federal surface coal reserves at San Juan's mines" and "are a major part of the minable federal coal within the Farmington [Resource Management Plan]." (Reply Brief at 2. See SOR, Appendix 1, Exhibits D, P.)

San Juan states that the likely impacts on it of transferring title include taxation by the Navajo Nation in addition to taxation by the State of New Mexico; additional environmental and other regulation; and transfer of administration of its leases. (SOR at 11-14.) These changes "would increase mining costs, thereby materially and adversely affecting San Juan and its on-going mining activities at the San Juan and La Plata mines, and would diminish significantly the value of the leasehold rights and interests held by San Juan in its federal leases at the San Juan and La Plata Mines." (SOR at 13.)

II. Procedural History of the Appeal

San Juan filed a petition for stay with its SOR. In addition to its arguments in support of a stay, San Juan stated that granting a stay would allow a continuation of the parties' efforts to negotiate a settlement. On October 10, 1996, we granted a stay and extended the time for BLM to file an answer to San Juan's SOR in order to promote the negotiations San Juan reported.

In June 1999, after receiving BLM's Response to San Juan's SOR and San Juan's Reply Brief, which stated that the settlement negotiations were continuing, we asked for a report on the progress of those negotiations. In November 1999, we suspended consideration of the appeal indefinitely to allow them to continue.

1/ The San Juan mine includes lease numbers NM-045196, NM-045217, and NM-045197 and the La Plata mine includes lease number NM-0315559. (SOR at 6-8.)

We terminated that suspension in response to a joint motion from the parties filed in September 2000 agreeing that settlement appeared unlikely.

III. Preliminary Procedural Issues

BLM makes several statements in its Response related to jurisdiction and standing that we must deal with at the outset.

BLM acknowledges that we have jurisdiction to decide appeals related to the use and disposition of public lands, including minerals. (Response at 15.) BLM states, however: "But IBLA does not have general jurisdiction over Indian matters" or "jurisdiction over Navajo/Hopi resettlement questions generally." Id. (emphasis in original). BLM adds:

> San Juan's very individual economic objections to the transfer of 2,400 acres of land may not serve as a springboard for the Company to demand an IBLA adjudication of the rights that relocated Navajo Indians might have vis-a-vis their own tribal government or against ONHIR. It will be a different forum -- and probably a different plaintiff/appellant -- if there is to be an adjudication as to whether the Navajo relocatees have been wronged under some aspect of the Relocation Act.

Id. at 15-16. We do not believe BLM intends these statements to question our jurisdiction over all aspects of San Juan's appeal but, if it does, in our view the selection of lands for transfer to the Navajo Nation and the effect of this action on San Juan's coal leases place this case squarely within our jurisdiction over decisions relating to the use and disposition of public lands and their resources. 43 CFR 4.1(b)(3).

BLM also states: "Arguably the instant appeal is not ripe because BLM's July 17 and July 31, 1996 letters, taken together, do not approve precise parcels within San Juan's leaseholds for immediate transfer to the Navajo Tribe. BLM acknowledges, however, that it would have attempted to work with the Tribe on slight boundary adjustments that are necessary, and would have worked towards the issuance of patents in favor of the Tribe if BLM had not been prevented from doing so by the filing of the instant appeal." (Response at 4, n.2.) We believe the appeal is ripe. See Blackwood & Nichols Co., 139 IBLA 227 (1997).

Finally, BLM states: "San Juan has no standing to raise abstract issues about Navajo land selections that the Tribe has not made * * * [or] to challenge land selections that do not affect the company." (Response at 6.) BLM contends that San Juan's fears of dual taxation, multiple-agency regulation, or more stringent environmental regulation "are not peculiar to Indian land that is selected by the Navajo Tribe under the Relocation Act." Id. at 5. Rather, "they are the exact same consequences that other lessees of federal coal commonly face in the West, where coal leases often include a mixture of Indian land (both tribal and allotted) and federal, state and private land." Id.

Although, from their context, we would have understood these statements as prefatory to BLM's arguments in response to San Juan's SOR, rather than as a challenge to San Juan's right to appeal the July 31, 1996, letters, BLM subsequently argues that San Juan has not suffered any injury as a result of those letters and that its claims of possible future injury are not "compensable injuries." (Response at 18.) BLM asks that we dismiss the appeal on the grounds that San Juan has suffered no injury at this time. Id. at 20.

We believe our decisions make clear that San Juan is adversely affected by BLM's letters and is entitled to administrative review under 43 CFR 4.410(a). Donald K. Majors, 123 IBLA 142, 144 (1992); Star Lake Railroad Co., 121 IBLA 197, 201-02, 98 I.D. 398, 401 (1991); Edwin H. Marston, 103 IBLA 40, 42 (1988); In Re Pacific Coast Molybdenum Co., 68 IBLA 325, 331-33 (1982). San Juan has demonstrated a substantial likelihood of injury to its legally cognizable interests from the potential transfer of title to lands within its leaseholds. BLM's request that we dismiss the appeal is denied.

IV. The History of the Relocation Act

The threshold issue raised by San Juan is that the Relocation Act "does not permit 'deselection' and 'reselection' without congressional authorization, which is absent here." (SOR at 55.) "It is clear from the law and legislative history that Congress did not provide general deselection and reselection powers. As a result, the present selections are invalid because, in conjunction with the prior selections, they would exceed the statutory 35,000 acre maximum selection in New Mexico." Id. at 56.

We summarized the history of the Relocation Act in Santa Fe Pacific Railroad Co., 90 IBLA 200, 202-203 (1986). For purposes of this case, we may take up that history with the July 1980 amendments to the original 1974 Act. In section 4 of those amendments, Congress "authorized and directed" the Secretary "to transfer not to exceed [250,000] acres of lands under the jurisdiction of the [BLM] within the State of Arizona and New Mexico to the Navajo Tribe * * * without cost to the Navajo Tribe." Pub. L. 96-305, § 4, 94 Stat. 929, 930, 25 U.S.C. § 640d-10(a) (1994). "Lands to be so transferred * * * shall, for a period of three years after the date of enactment of this subsection, be selected by the Navajo Tribe after consultation with the [Navajo and Hopi Indian Relocation] Commission: * * * *Provided further*, That not to exceed [35,000] acres of lands so transferred * * * shall be selected within the State of New Mexico." Id., 94 Stat. 929, 931, 25 U.S.C. § 640d-10(c) (1994).

In October 1981, the Navajo Tribal Council adopted a resolution selecting 35,000 acres in the Paragon Resources Ranch in New Mexico and requesting BLM to immediately take appropriate steps to transfer it. (SOR, Appendix 2, paragraph 24 and Exh. 1, page 2.) In April 1982 the chairman of the tribal council wrote Secretary Watt stating that, in consultation with the Commission, the Tribe "hereby selects for transfer to the Navajo

Tribe the lands under the jurisdiction of the [BLM] within the State of New Mexico as described in Attachment A." (SOR, Appendix 2, Exh. 11.) The 35,000 acres of land described in Attachment A are shown on map 5 of the Commission's June 1983 report to the Congress. (SOR, Appendix 3.)

In 1983, the Congress began to consider proposed legislation to establish a wilderness area in the San Juan Basin. See H.R. 3766, the San Juan Basin Wilderness Protection Act of 1983, 98th Congress. Approximately 7,500 acres of land proposed for inclusion in the wilderness, e.g., the Fossil Forest, lay within the 35,000 acres selected in 1982. See Hearings before the Subcommittee on Public Lands and National Parks, Committee on Interior and Insular Affairs, House of Representatives, 98th Congress, 1st & 2nd Sessions, October 21, 1983, at 49. (SOR, Appendix 28 C.)

At these October 21, 1983, hearings on the San Juan Basin wilderness bill, Paul Frye, an attorney for the Department of Justice of the Navajo Nation, stated:

> The Navajo Tribe has * * * selected some of the areas that are designated to be protected as a wilderness in the selection under the Navajo-Hopi Settlement Act consistent with our duties to the relocatees, the people who will be forced to relocate. We support the designation of wilderness of these areas, but we have to make sure that the Navajo Tribe does receive the maximum value and the best lands for these relocatees because the costs of relocating are going to be staggering. The infrastructure costs are just tremendous.
>
> So we would again cooperate fully with any type of proposal or legislation that would preserve these lands in the State that we think is the maximum resource value for the lands, yet not prejudice the rights of the relocatees from the former joint use area.

Id. at 48. Shortly afterwards, the following colloquy took place:

> [Representative] Lujan: The 7,500 acres, those that have not been agreed upon that those would be, in fact, locatable lands by the Navajo Tribes or they already have been agreed to[?]
>
> Mr. Frye: The Navajo Tribe has requested the immediate transfer of those 7,500 acres * * * .
>
> Mr. Lujan: Why don't you just select 7,500 acres somewhere else instead of saying we want them there, but then you transfer some over to us? Why is that not better?
>
> Mr. Frye: When the selection took place, a lot of this wilderness activity was not going on. On July 8 of this year, our authority under the Settlement Act to select lands expired.

Mr. Lujan: When did you select them?

Mr. Frye: These were selected late last year.

Mr. Lujan: We have known before then that these would be [candi]dates. I can't understand the reasoning why you would go in and select some land in an area that you say should be wilderness and then exchange. It is because it is not [sic] more coal value, frankly?

Mr. Frye: Yes; absolutely. We are trying to maximize the value of the lands we select for the people who will have to be relocated.

Id. at 49.

Representative Seiberling then asked:

Mr. Seiberling: Let me ask you, Mr. Frye. Suppose we wrote a provision into the bill that said that you may select in lieu of the 7,500 acres or such portions as are in the areas proposed for wilderness, other lands that would be of equal value but not less than the same amount of acres, or something like that?

Mr. Frye: I think we would be amenable to that.

Id. at 50.

Later, in response to a question from Representative Craig, Frye stated:

Mr. Frye: What I would like to do is go back to our land development staff. I know there have been some lands as a result of our inquiry into H.R. 3766 as to what other lands we could select if we had the power to select still which would be of approximately the same value to us. So I would like to defer my answer to that and perhaps respond to the Subcommittee later.

Representative Craig then suggested:

Mr. Craig: Mr. Chairman, Mr. Frye, I think that instead [of] this committee and Congress deciding that H.R. 3766 is the bill we want to pursue and facing the complication of determining values for the exchanges involved it would be better to adjust the timeframe or limitation and pick other areas so we won't need the BLM to expend cost[s] for further studies. Do you understand what I am saying?

Mr. Seiberling: I think that is right and if they could do that[,] that would be very good. If they could decide they feel they could get the same values by selecting 7,500 acres

somewhere else it seems to me that that would resolve the whole thing. * * * I think what we need to do is to allow a little more time for them to evaluate just how they see their interests here and perhaps we can then structure the legislation to accommodate them.

Mr. Frye: I would hope to be able to come back with a proposal to the committee within 1 or 2 weeks.

Id. at 55, 58.

On November 7 and 9, 1983, Mr. Frye wrote to Representative Seiberling concerning H.R. 3766:

* * * Attached is a proposed amendment * * * [that] allows the Navajo Tribe, in its discretion and after consultation with the Relocation Commission, to select lands in lieu of those which have been selected by the Tribe but which are to be protected under H.R. 3766.

Id. at 223.

The proposed amendment read:

(b) Except as provided herein, nothing in this Act shall affect the transfer to the Navajo Tribe of any lands selected by the Navajo Tribe pursuant to Public Law 95-531 and Public Law 96-305. Provided, however, that, notwithstanding the limitations imposed by section 4 of Public Law 96-305, within eighteen months after the date of enactment of this Act, the Navajo Tribe, after consultation with the Relocation Commission, shall have the authority to and shall select lands in New Mexico administered by the Bureau of Land Management of equal acreage in lieu of the lands which have been previously selected by the Navajo Tribe within the boundaries of the Wilderness areas and of the Fossil Forest, as described in sections 2(a) and 3(a) of this Act.

Id. at 228.

In House Report No. 98-834, 98th Cong., 2d Sess., on the San Juan Basin Wilderness Protection Act of 1983, dated June 11, 1984 (SOR Appendix 28 C), the Committee on Interior and Insular Affairs stated that "in order to fully insure that wilderness and other values are permanently protected, the Committee worked with the Navajo Nation to authorize and mandate the selection of alternate lands * * *. Subsections 5 (b) and (c) modify Public Laws 93-531 and 96-305 to allow

such alternate selections * * * ." Report 98-834 at 10. The section-by-section analysis stated that section 5(b) of the bill "provides for alternate (in lieu) land selections by the Navajo Nation." Id.

On October 3, 1984, Congressman Richardson, in presenting H.R. 6296 (which was substituted for H.R. 3766) on the floor of the House for consideration, stated:

> I should also note, and express my sincere thanks to the Navajo Nation for having already shifted their proposed land selections under the Navajo-Hopi Relocation Act to lands outside the proposed De-na-zin Wilderness. * * * The substitute, like my original bill, also requires the Navajo Nation to select lands outside the Fossil Forest in lieu of the lands already selected within the area. The Navajo fully support this alternative selection mandate as well as the bill's provisions for protection of the areas.

130 Cong. Rec. 29478, 98th Cong., 2d. Sess. (House of Representatives, October 3, 1984). (SOR, Appendix 28 C.) On October 5, 1984, in explaining Senate amendments to the bill passed by the House of Representatives, Congressman Richardson stated:

> Mr. Richardson: Mr. Speaker, this bill contains exactly the same wilderness proposals in New Mexico's San Juan Basin as passed the House Wednesday evening on unanimous consent. In addition, the Senate has amended the bill to incorporate the following:
>
> Transfer the surface and subsurface of certain lands in New Mexico which have been selected by the Navajo Nation to the Navajo, subject to pending coal lease applications and certain payments to the State of New Mexico. * * *
>
> Mr. Speaker, it is my understanding that the various provisions added by the Senate have the unanimous consent of the entire New Mexico Congressional delegation, the State of New Mexico, and the Navajo Nation, and are without controversy.

130 Cong. Rec. 30337-38, 98th Cong., 2d Sess. (House of Representatives, October 5, 1984). (SOR, Appendix 28 C.) The House concurred in the Senate amendments on October 5 and the bill became Public Law 98-603 on October 30, 1984.

The proposal offered by Mr. Frye in November 1983 and discussed in House Report 98-834 was contained in the language of sec. 105(b) of the San Juan Basin Wilderness Protection Act of 1984:

> Except as provided herein, nothing in this Act shall affect the transfer to the Navajo Tribe of any lands selected by the Navajo Tribe pursuant to Public Law 93-531 and Public Law 96-305: *Provided, however*, That, notwithstanding the limitations imposed by section 4 of Public Law 96-305, within eighteen months after the date of enactment this Act, the Navajo Tribe, after consultation with the Relocation Commission, shall have

> the authority to and shall select lands in New Mexico administered by the Bureau of Land Management of equal acreage in lieu of the lands which have been previously selected by the Navajo Nation within the boundaries of the Fossil Forest, as described in § 103(a) of this Act. A border of any parcel of land so selected shall be within 18 miles of the boundaries of the Navajo Reservation described in Executive Order dated January 6, 1880.

§ 105(b), Public Law No. 98-603, 98 Stat. 3155, 3157 (October 30, 1984). Section 103(a) of the Act, referred to in section 105(b), withdrew 2,720 acres of BLM land known as the Fossil Forest.

Within the 18 months required by section 105(b), on March 12, 1986, the chairman of the Navajo Tribal Council sent the Commission the Tribe's "Final Selections at [the] Paragon Ranch area, New Mexico," noting that the amended selections replaced those made in September 1984 and arose out of the change in the Relocation Act made by the San Juan Basin Wilderness Act. (SOR, Appendix 12.) The selections totalled approximately 33,715 acres. On April 29 and 30, 1986, the chairman of the tribal council sent selections of these and the remaining 1,760 acres to the State Director, New Mexico State Office, BLM, stating that he looked forward to transfer of the lands at the earliest feasible time. (SOR, Appendices 14 and 15.) By letter to Secretary Hodel dated May 28, 1986, the Commission endorsed these final selections. (SOR, Appendix 17.) On July 31, 1986, BLM published a Notice of Realty Action stating that 34,593.68 acres could be conveyed in trust to be held as part of the Navajo Reservation. (51 FR 27467-68 (July 31, 1986); SOR, Appendix 19.)

In 1988, Congress passed amendments to the Relocation Act which included a restructuring of the Relocation Commission. The Commission was terminated and replaced by a single commissioner and the office renamed as the Office of Navajo-Hopi Indian Relocation (ONHIR). (The Navajo and Hopi Indian Relocation Amendments of 1988, Public Law No. 100-666; see 25 U.S.C. 640d-11 (1994).)

BLM has issued four patents placing lands in trust for the Navajo Nation. (SOR at 35, Appendix 23.)

V. Does the Relocation Act, as Amended, Authorize the Requested De-selection and Re-selection?

San Juan argues that the San Juan Basin Wilderness Protection Act of 1984 provided the only authority Congress has given to deselect and reselect land under the Relocation Act. That authority, it submits, was limited to a specific circumstance: the lieu selection was permitted because some of the lands selected by the Navajo in 1982 were proposed for wilderness protection under the 1984 Act. "Given that Congress deemed it necessary to provide express authority for the selection of 'lieu' lands to replace lands previously selected within the Fossil Forest area, it is clear that Congress did not otherwise intend for the Navajo or ONHIR to have generalized, unilateral authority to deselect previously selected

lands whenever they wish." (SOR at 57.) Congress did not provide the power to deselect and reselect to the Navajo or ONHIR except in the 1984 amendments to the Relocation Act, to facilitate the San Juan Basin Wilderness legislation, San Juan argues. Id., citing In Re Haas, 48 F.3d 1153, 1156 (11th Cir. 1995); Detweiler v. Pena, 48 F.3d 591, 594 (D.C. Cir. 1994), and United States v. Goldbaum, 879 F.2d 811, 813 (10th Cir. 1989.)

BLM responds that San Juan does not understand the normal process of land exchange and land selection transactions involving BLM and the Navajo Tribe. Some of these transactions result from cooperation, some from litigation, some, such as this one, from legislation, BLM explains. (Response at 16-17.) "In all of these transactions it is common for selections, deselections, reselections and similar negotiations to take place up to the point where a patent or deed is issued to transfer the land being negotiated for or exchanged. It is issuance of a patent or deed and only that action that normally makes a land transaction 'final.'" Id. at 17 (emphasis in original). "BLM notes that the Tribe has 'deselected' land on a number of occasions in the past. There is nothing particularly unusual about the current request to deselect. Past Navajo land selections do not preclude the Tribe from selecting the land that it now seeks at the San Juan and La Plata mines." Id.

In reply, San Juan argues that the San Juan Basin Wilderness Protection Act of 1984 "completely undermines BLM's position that selections are not final until patents are issued and that lands can be selected, deselected, and reselected under the Relocation Act. If BLM were correct, then the statutory 'in lieu' selection provision in the 1984 Amendments would have been unnecessary." (Reply Brief at 9.) San Juan argues, citing United States ex rel. Harlan v. Bacon, 21 F.3d 209, 212 (8th Cir. 1984), and Jackson v. Kelly, 557 F.2d 735, 740 (10th Cir. 1977), that there is a strong presumption that when Congress acts, it acts with a purpose. "In the absence of congressional authorization, the BLM cannot permit the deselections and reselections proposed here." Id. at 9. That deselection is not authorized, San Juan argues, "is further evidenced by the fact that the deselections here would leave tracts in Paragon Ranch, which have been patented already to the Navajo Nation, wholly outside the 18 mile statutory limit in violation of the Relocation Act." Id.

[1] In our view, whatever the practice may be in the context of other land transactions, both the statutory language and the legislative history set forth above make clear that Congress intended section 105(b) of the 1984 amendments to the Relocation Act as a one-time authorization for the Navajo Nation to select lands other than the lands in the Fossil Forest it had selected in 1982.

Section 4 of the 1980 amendments, Public Law 96-305, gave the Navajo Tribe three years to select up to 35,000 acres in New Mexico to be transferred to it by the Secretary, and the Tribe did so in 1982. Some of the land it selected in the Paragon Resources Ranch area was desirable as wilderness, so members of the House Subcommittee on Public Lands and National Parks proposed to authorize the Tribe to select lands in lieu of

the lands proposed as wilderness. The Tribe accepted the suggestion and drafted the language that became section 105(b) of the 1984 amendments. That section provided that within eighteen months of enactment the Tribe "shall select lands in New Mexico administered by BLM of equal acreage in lieu of the lands which have been previously selected by the Navajo Tribe within the boundaries of the Fossil Forest," and the Tribe did so in 1986. If the Congress had intended the 1980 amendments to include the authority for the Tribe to change its selections after the three year period provided in those amendments, it would not have been necessary to include section 105(b) in the 1984 amendments. We think it is clear that in 1983 the Tribe understood and the Congress understood that a special authorization and additional time were needed for the Tribe to choose other lands than it originally did. A lieu or indemnity selection is a well-established concept in public land law. See, e.g., 43 U.S.C. §§ 1611(a)(1), 1613(f) (1994); § 3, Act of July 27, 1866, 14 Stat. 292, 294-5; Udall v. Battle Mountain Co., 385 F.2d 90 (9th Cir. 1967); Andrus v. Utah, 446 U.S. 500, 506-507 (1980). The drafters and sponsors of the 1984 amendments employed the terminology of that concept in describing the bill. We are not willing to regard the 1984 amendments as superfluous. Jackson v. Kelly, 557 F.2d 735, 740 (10th Cir. 1977); McNabb Coal Co., Inc. v. OSM, 101 IBLA 282, 289 (1988); Earl Williams, 140 IBLA 295 (1997).

Accordingly, we hold that neither the Tribe nor the Office of Navajo and Hopi Indian Relocation had authority to deselect the lands the Tribe selected in 1986 and re-select the lands requested in 1996. Because of this threshold barrier, we do not address San Juan's arguments about the other impediments to BLM's action. 2/

2/ See SOR at 3-4. First, San Juan contends the proposed selections and conveyances would violate the land use planning provisions of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1784 (1994), and implementing regulations in 43 CFR Part 1600, applicable provisions of the BLM Manual, and the Farmington Resource Management Plan (July 1988), because the lands selected are identified as being within the "the Retention Zone," and are not identified for disposal or exchange. Assuming the deselections and selections announced in BLM's July 31, 1996, letters are authorized under the Relocation Act, San Juan insists a plan amendment to the Farmington Resource Management Plan would be required before the contemplated selections could go forward.

Second, San Juan maintains that Congress under the Relocation Act did not authorize selection of land that cannot be used for the physical relocation of displaced Navajo tribal members, i.e., lands within active coal mines.

Third, San Juan argues there is no "mandatory, non-discretionary duty to convey" as claimed in BLM's July 31, 1996, letters. Rather, BLM must exercise discretion in considering the current selections. If BLM's duties are mandatory, San Juan insists that "BLM must convey the Paragon Resources Ranch lands, not the San Juan and La Plata Mines lands." (SOR at 4.)

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's
July 31, 1996, decisions are reversed.

_____
Will A. Irwin
Administrative Judge

I concur:

_____
James L. Burski
Administrative Judge

_____
fn. 2 (continued)

Fourth, San Juan maintains BLM is prevented by the Relocation Act from conveying the land selected because San Juan's rights and interests will necessarily be diminished by the transfer in violation of the express terms of Relocation Act.

Finally, San Juan argues that the lands selected within the La Plata mine lie beyond the 18-mile limit in which selections are congressionally authorized under the Relocation Act.

In its Supplemental Authority and Argument, San Juan adds that the Navajo Nation is barred by the doctrine of judicial estoppel from pursuing the selections at issue here, i.e., "de-selecting" Paragon Ranch lands and re-selecting lands within San Juan's La Plata and San Juan mines.